

LEGAL POSITION OF THE AMERICAN COLLEGE

AT SIMEONOVO, NEAR SOFIA,

DURING AND AFTER WORLD WAR II

I. Bulgarian Law Dealing Directly with the Subject.

For the purpose of establishing the legal position of the American College at Simeonovo with respect to property rights, the Bulgarian Official Gazette (Qurzhaven Vestnik and, after December 1, 1950, Izvestiia na Presidiuma na Narodnoto Subranie) was consulted. The last available issue is that of November 25, 1952.

(With the declaration of war between Bulgaria and the United States on December 13, 1941, the American College at Simeonovo, near Sofia, being the property of an association with its seat at Boston, Mass., underwent a change of status. On April 13, 1942 (Qurzhaven Vestnik No. 77) the Bulgarian Government enacted a law establishing control over all properties of nationals of enemy countries and residents thereof, whether individuals or corporations. The control was vested in an Office of the Custodian of Enemy Property, attached to the Ministry of Commerce, Industry, and Labor, and was effected as regards real property by means of recording the fact with the Office of Records and appointing a caretaker. The Council of Ministers was competent to extend the effect of the law to specific enemy countries. The extension of its effect to cover the United States was made by a resolution

of the Council of Ministers of May 2, 1942 (Durzhaven Vestnik No. 94), clarified by a special regulation of August 31, 1942 (Durzhaven Vestnik No. 193).

Judging from a subsequent Decree Law concerning payment of indemnity and rent to the college (Durzhaven Vestnik No. 205, November 13, 1945) the real properties of the college were surrendered to the Office of the Custodian of Enemy Property on September 12, 1942, and a protocol of surrender was signed dated September 20, 1942 (Resolution of the Council of Ministers, Durzhaven Vestnik No. 215, September 19, 1945).

According to the special regulation for the application of the law, the Council of Ministers was empowered to give occupancy of such enemy properties to government agencies for temporary use. By virtue of a resolution of the Council of Ministers of September 29, 1942 (Durzhaven Vestnik No. 218) the properties of the college were turned over to the Ministry of Public Education, which used them for the purpose of operating a school of foreign languages. The school was closed by a Decree Law of December 25, 1944 (Durzhaven Vestnik No. 257) effective November 15, 1944.

As a result of the change of government on September 9, 1944, Bulgaria came to terms with the United States, Great Britain and the Soviet Union, and from its position of enemy country as regards the United States it became a vanquished country subject to a regime to armistice. The formal armistice agreement was concluded on October 26, 1944, providing in regard to the problem

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in question that, "The Government of Bulgaria will restore all property of the United Nations and their nationals..., and will make such reparation for loss and damage caused by the war to the United Nations,...as may be determined later (Article 9)...the Government of Bulgaria will restore all rights and interests of the United Nations and their nationals in Bulgaria (Article 10)!"

Anticipating these provisions of the armistice agreement, the Bulgarian Government resolved on September 19, 1944 to lift the operation of the law on control over enemy property as regards the United States and some other countries (Durzhaven Vestnik No. 204, Supplement). Sec. 2 of the Council's resolution provided as follows:

All properties placed under control..shall be restored to the possession of their owners or to the possession of the owners' authorized representatives within the extent of their powers of attorney.

The liquidator of the Office of the Custodian of Enemy Property shall continue to exercise due care as caretaker of those properties whose owners or the authorized representatives thereof are not in Bulgaria in order that they return and assume possession.

The above general provisions were made specific as regards the American college at Simeonovo by a resolution of the Council of Ministers of September 19, 1945 (Durzaaven Vestnik No. 218), which provided as follows:

It is resolved to remove the control over the American College at Simeonovo and to return the premises and all other properties of the college in good order to the authorized representative in accordance with the protocol of surrender of September 20, 1942. The rent for the period during which the college has been used by the Bulgarian Government is to be agreed upon.

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Two months after the above-quoted resolution was passed the Bulgarian Government enacted a Decree Law (Durzhaven Vestnik No. 265, November 13, 1945) authorizing the payment of indemnity and rent to the college. The two sections of the law provide as follows:

Sec. 1. It is hereby authorized that the American College at Simeonovo, through its authorized representative, shall be paid an indemnity amounting to 5,592,000 leva to restore the real property to the state in which it was surrendered on September 12, 1942, as well as to compensate for missing objects and damage to the movable property, and for pecuniary claims; it shall also be paid the sum of 18,500,000 leva for the rent of the entire property for the period from September 12, 1942 to October 11, 1945--that is, a total sum of 24,092,000 leva as indemnity and rent, which shall be paid from the appropriations of the Office of the Commissioner to Carry Out the Armistice Agreement.

Sec. 2. The American College at Simeonovo shall be exempted from paying any taxes, fees, or other levies on the above-mentioned sum representing the indemnity and rent.

The appearance of the Office of the Commissioner to Carry Out the Armistice Agreement in the above-quoted enactment is to be explained by a Decree Law of October 4, 1945 (Durzhaven Vestnik No. 231), whereby the original law on control over enemy property was amended and the requirement for the Commissioner's assent in these matters was introduced. Subsequently the Office of the Custodian of Enemy Property was transferred under the Office of the Commissioner to Carry Out the Armistice Agreement by a law of August 16, 1946 (Durzhaven Vestnik No. 136). It is to be noted that the Commissioner was at the same time Minister of Foreign Affairs.

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II. Remedies Available to the Owner.

1. Under the Treaty of Peace.

An examination of the Bulgarian Official Gazette and other collections of legislative acts for the period after November 13, 1945 has not revealed any specific enactment dealing with the property of the College. Likewise, no general law which could directly affect its property rights has been located. One general enactment which directly concerned the College was the Edict of August 3, 1948 (Durzhaven Vestnik No. 130), which ordered the closing of all foreign schools in Bulgaria. However, it does not contain any provisions concerning the property rights of the closed schools.

Thus, from a strictly legal point of view the property rights of the American College continue to fall under provisions of the above-quoted enactments of September 19, 1945 and November 13, 1945, which ordered the restoration of the situation existing prior to the seizure of the property in 1942. In other words, the ownership rights of the American College have not been restricted under any explicit provision of the Bulgarian law. Moreover, ownership of the American College also comes under the provisions of the Armistice Agreement of 1944 and the Treaty of Peace of 1947.

The Armistice Agreement of 1944 established the duty of Bulgaria to "restore all property of the United Nations and their nationals" (Art. 9) and also to "restore

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all rights and interests of the United Nations and their nationals" (Art. 10). However, no specific procedure was established by which the nationals of the United Nations could seek such restoration. The only possibility was to petition the Allied Control Commission, which under Art. 18 of the Armistice Agreement was charged in general with "regulating and supervising the execution of the terms of the armistice."

The Treaty of Peace of February 10, 1947 established a special remedy for the owner whose property had not been restored. According to Art. 23 of the Treaty, he had to file his claim within 12 months of the coming into force of the Treaty, i.e., not later than September 18, 1948, unless "the claimant is able to show that he could not file his application within this period." The pertinent provisions read:

23 (1) In so far as Bulgaria has not already done so, Bulgaria shall restore all legal rights and interests in Bulgaria of the United Nations and their nationals as they existed on April 24, 1941, and shall return all property in Bulgaria of the United Nations and their nationals as it now exists.

(2) The Bulgarian Government undertakes that all property, rights, and interests passing under this article shall be restored free of all encumbrances and charges of any kind to which they may have become subject as a result of the war and without the imposition of any charges by the Bulgarian Government in connection with their return. The Bulgarian Government shall nullify all measures including seizures, sequestration or control, taken by it against United Nations property between April 24, 1941 and the coming into force of the present Treaty. In cases where the property has not been returned within six months from the coming into force of the present Treaty, application shall be made to the Bulgarian authorities

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not later than twelve months from the coming into force of the Treaty, except in cases in which the claimant is able to show that he could not file his application within this period.***

Attention may be drawn to the fact that the filing of the application is not totally precluded after the expiration of the 12-month period. But in such instances the claimant must justify his delay.

2. Under Bulgarian Domestic Law.

If the owner failed to seek redress within the prescribed period of twelve months and is unable "to show that he could not file his application within this period," the matter then becomes subject to Bulgarian domestic law. In this case the regular remedies afforded to the owner who seeks to recover property the possession of which is denied to him, must be resorted to.

In the period from September 15, 1948 to December 16, 1951 such an action was regulated by Sects. 32 and 311 of the Law on Properties, Ownership, and Servitudes of 1904. Sec. 311 reads:.

311. Whoever has been deprived forcibly or clandestinely of the possession of personal or real property of any kind may within six months from the date of the deprivation sue the holder for recovery of possession.

If the owner did not avail himself of this action within the prescribed period, he could institute an action under Sec. 32, which reads:

32. The owner of a property shall have the right to recover it from any holder thereof....***

Such right to real property expired after a lapse of twenty years by virtue of Secs. 34 and 37 of the Statute

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of limitations of 1897, which read:

34. The right of ownership and all other property rights involving real property may be acquired by a continuous possession for twenty years; a legal title and good faith shall not be required.

37. All actions on property rights concerning real property shall be precluded by the lapse of twenty years.***

The above-mentioned Law on Properties, Ownership, and Servitudes of 1904 and the Statute of Limitations of 1897 have been superseded by the new Law on Ownership of November 16, 1951 (Izvestiia... No. 92), which took effect one month after its publication, i.e., on December 16, 1951. Under Chapter IX, "Protection of the Right of Ownership," an owner has the following remedy:

Sec. 108. The owner may, in order to recover his property, sue anyone who possesses or holds it without legal right.

Sec. 109. The owner may institute an action to terminate any unjustifiable act preventing him from the exercise of his rights.***

However, according to Chapter VIII, Subchapter 2, "Acquisition of the Right of Ownership by Lapse of Time," any continuous holding of real property for ten years creates ownership rights. The pertinent Section 79 reads:

79. The right of ownership of a real property shall be acquired through lapse of time if the property has been held continuously for ten years.

In cases of bona fide possession the right of ownership shall be acquired by a lapse of five years of continuous holding.

The procedure for instituting an action to recover possession or ownership is outlined in the new Code of

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Civil Procedure of February 3, 1952 (Izvestiia... No. 12), which superseded the old Code of Civil Procedure of 1930.

The general and specific provisions are as follows:

Sec. 2. The courts must consider and decide any action instituted for the protection and implementation of personal or property rights.***

Sec. 7. Redress in court may be sought against any person in the country, except those enjoying the right of extraterritoriality.***

Sec. 8. Persons enjoying the right of extraterritoriality and foreign states shall come within the jurisdiction of the people's courts in the following cases:

- (a) in actions instituted by them;
- (b) in lawsuits relating to enterprises owned by them and located within this country;
- (c) in lawsuits involving property rights to real property located in this country.

Sec. 9. The parties to a lawsuit may not agree to submit to a foreign court or arbitration any case coming within the jurisdiction of the people's courts, except cases between socialist organizations and foreign enterprises for which a written agreement has been made.

Sec. 43. All contact between the court and persons or agencies outside the confines of the People's Republic of Bulgaria shall be conducted through the Ministry of Foreign Affairs.

Sec. 44. The party residing abroad must indicate an address for the purposes of the lawsuit if it has no authorized representative in the People's Republic.

No provision of Bulgarian statutes in force at the present time was located which directly grants to alien individuals or corporations the right to sue and be sued in Bulgaria. However, no provisions were located denying or restricting such rights, or, in general, discriminating in this respect against alien parties.

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In the absense of such a statutory discrimination, it may be inferred from the above-quoted sections of the Code of Civil Procedure that aliens, whether individuals or corporations, may institute actions to recover possession or ownership as well as be respondents in such actions without any requirement of reciprocity. Such actions are entirely within the jurisdiction of the Bulgarian courts.

III. Situations Which May Arise under Special Laws Restricting the Right of Ownership.

In view of the absence of an explicit provision of law affecting the property rights of the American College it may be stated that if the College was deprived of possession, it was done without a legal foundation, and the College may avail itself of remedies specified above under II.

However, in view of the absence of information concerning the factual situation some other possibilities exist. The present-day Bulgarian law provides for several instances in which the owner may be deprived of possession and property rights. These instances are the following.

A. The Law on Requisitioning of March 23, 1939 (Qurzhaven Vestnik No. 68) provides that the Government may requisition for a fair compensation any personal or real property needed by the armed forces or the population. According to Chapter IX of the regulation issued for the application of the law (Qurzhaven Vestnik No. 149, July 8, 1939), the owner of property earmarked for requisitioning must be notified by the local authorities (obshtina) and

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a record of the surrender of the property must be drawn up. According to a resolution of the Council of Ministers of October 28, 1947 (Qurzhaven Vestnik No. 250), no requisitioning could be done after September 16, 1947.** All pending cases concerning compensation were to be dealt with within six months after September 16, 1947.

The law on requisitioning has been liberally applied as is demonstrated, for example, by the Decree Law of October 4, 1946 (Qurzhaven Vestnik No. 231) empowering the Minister of Propaganda to request the requisitioning of buildings for the needs of public reading rooms, cultural institutions, and the like.

B. The Law to Rent Real Property for Government and Public Use of August 28, 1946 (Qurzhaven Vestnik No. 196) provides that all real property requisitioned by virtue of the law on requisitioning (supra A) was regarded thenceforward as rented by the Government. Agencies using such properties were to make contracts for a lease with the owners, and in case the rent could not be agreed upon, it was to be determined by the county judge, whose decision was final. Sec. 2 provided further that any real property could be compulsorily rented at the request of the agency concerned. Such requests were given effect by order of the Minister of the Interior and the order was carried out by the executive authorities. The rents were agreed upon or were adjudicated by the county judge.

**See note page 13.

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C. The Law to Nationalize All Sizable Urban Property of April 13, 1948 (Durzhaven Vestnik No. 87) could hardly have been used in this instance since it provides for nationalization of urban property of a certain size within the limits of cities and towns. The property of the College is outside the city limits of Sofia as determined by this law.

D. The Law on Land Tenure of April 9, 1946 (Durzhaven Vestnik No. 61) affords the Government the right to seize any lands of the College in excess of thirty decares.

E. The Law to Expropriate Real Property for Government or Public Use of February 23, 1935 (Durzhaven Vestnik No. 18) as amended, required all expropriations for government or public use to be effected by a legislative act. On December 22, 1948, the Law of 1935 was superseded by the Law on Government Properties (Durzhaven Vestnik No. 300). Thereafter the expropriations required merely a resolution of the Council of Ministers. The Council of Ministers in such instances was able to invoke the provisions of the Law to Protect State Secrets of September 28, 1948 (Durzhaven Vestnik No. 227) and avoid publication of the expropriating resolution. The Law on Government Properties of 1948 was superseded by the Law on Ownership of 1951. Its provisions were developed in a special regulation of July 8, 1952 dealing with the expropriation of private real property for government or public use (Izvestiia... No. 57). The Law On Ownership and the special regulation

state that all expropriations are decreed by the Council of Ministers and that the owners are notified. However, in cases of expropriation "for needs involving a state secret" the prescribed procedure is dispensed with, including publication of the expropriating resolution of the Council of Ministers in the Official Gazette.

Note to page 11. This date points to a discrepancy concerning the date of the coming into force of the Treaty of Peace. On the American side the date is September 15, 1947, according to a proclamation of the President of the same date (Dept. of State, Bulletin, Xvii, 1947, p.771). On the Bulgarian side the date is September 15, 1947, as indicated in a Resolution of the Council of Ministers of October 9, 1947 (Orzhaven Vestnik No. 234). If the Bulgarian date is taken as valid, the time limit for filing property claims under the treaty was September 16, 1948.

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